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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 06-069

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]**

#### **1. Statutory Authority**

The department may wish to review its authority for s. RL 91.03 (1) (c) 8. Section 460.09, Stats., provides that the department shall grant a massage therapist or a bodyworker certificate to a person who holds a similar certificate in another jurisdiction if the department determines that the requirements for receiving the certificate in the other jurisdiction “are substantially equivalent to the requirements under s. 460.05.” There is nothing in s. 460.05, Stats., that is parallel to s. RL 91.03 (1) (c) 8. While the department clearly has authority to establish standards of professional conduct, a violation of those standards does not necessarily result in loss of certificate. Under the rule, a single incident of negligence, for example, requires the denial of a reciprocal certificate.

#### **2. Form, Style and Placement in Administrative Code**

a. It is assumed that the department’s analysis does not generally inform how the proposed rule differs from the current rule because the department presumes that interested persons are already familiar with ch. 460, Stats., which the rule replicates in large part.

b. The department’s analysis fails to cite pertinent provisions of 2005 Wisconsin Acts 25 and 277.

c. The definition of “approved training program” in s. RL 90.02 (1g) is awkwardly drafted. Consideration might be given to dropping the definition and including the terms of the

definition in s. RL 92.01. If that is done, references to an approved training program outside of s. RL 92.01 could refer to “an approved training program under s. RL 92.01.”

d. Section 460.04 (2) (d), Stats., directs the department to by rule define “sexually oriented business” for purposes of s. 460.11 (3), Stats. Section RL 90.02 (13) is in response to that directive. However, the rule does not define “sexually oriented business” but merely references s. 944.34, Stats., relating to keeping a place of prostitution, which does not define the term. See s. 939.22 (24), Stats., and Wis JI-Criminal, s. 1570, for a definition of the term.

e. In s. RL 91.01 (3) (a), if the definition of “approved training program” is retained, there is no need to include “as described in s. RL 92.01” because that is part of the definition.

f. It is suggested that s. RL 91.01 (3) (j) be revised to read: “Has successfully completed a course of 5 classroom hours in adult cardiopulmonary resuscitation and standard first aid unless the applicant has graduated from a school of massage therapy or bodywork approved by the educational approval board or unless the 5 classroom hours are completed by the applicant as part of an approved training program [under s. RL 92.01?].”

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. RL 91.01 (3) (e), reference to s. 948.02, Stats., should be inserted. In addition, see 2005 Wisconsin Act 277, regarding inclusion of reference to s. 948.085, Stats., and see s. RL 91.03 (1) (c) 2.

b. The reference in s. RL 91.015 (intro.) to “a requirement of” s. RL 91.01 (3) (a) and (b) is inadequate. Are all the requirements waived or are only specific requirements waived?

c. In s. RL 91.03 (1) (c) 1., reference to “the requirements for which are substantially equivalent to the requirements under s. 460.05, Stats.,” should be deleted. The requirements referred to are replicated elsewhere in the rule.

d. In s. RL 91.03 (2) (intro.), reference to “the requirements under s. 460.05, Stats.,” should be more specific. Inclusion of either s. RL 91.03 (2) (a) or (b) in another jurisdiction’s requirements does not make the requirements of that jurisdiction “substantially equivalent to the requirements under s. 460.05, Stats.”

e. Section RL 91.05 (3) refers to a form. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

f. In s. RL 91.05 (7), “subsection” should be substituted for “section” in the second sentence and the defined term should be “actively engaged in the practice of massage therapy or bodywork.”

g. In s. RL 94.01 (20), the pertinent provision or provisions of ch. 460, Stats., should be referenced rather than the general reference to ch. 460, Stats.

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

- a. In the rule preface description of SECTION 36, the word “describing” should be inserted after the word “note.”
- b. In the rule preface description of SECTION 37, the second occurrence of the word “deletes” should be deleted.
- c. The rule preface description of Iowa and Illinois law is incomplete. A brief discussion of the regulations of those states should be included.
- d. Section RL 91.01 (3) (g) should be redrafted for a greater clarity, perhaps by creating a list in subunits. In addition, it appears that reference should be made to the national commission “for” certifying agencies, not “of” certifying agencies.
- e. In s. RL 92.01 (1), the underscored “and” should be deleted.
- f. In SECTION 36 of the rule, should reference be made to “reporting” forms rather than “complaint” forms?
- g. How does s. RL 94.01 (30) relate to current s. RL 94.01 (11)? The provisions should be combined and harmonized.